

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENE PRATT, JR.,

Plaintiff,

v.

SACRAMENTO PROTECTION
SERVICES, et al.,

Defendants.

No. 2:22-cv-2117 KJN P

ORDER

Plaintiff is a pretrial detainee, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These

1 payments will be forwarded by the appropriate agency to the Clerk of the Court each time the
 2 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
 3 § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief against a
 5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
 6 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally
 7 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
 8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
 10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
 12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
 13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
 14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
 15 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
 16 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
 17 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
 18 1227.

19 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
 20 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
 21 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
 22 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 23 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
 24 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
 25 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
 26 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the
 27 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.
 28 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal

1 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
2 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
3 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
4 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

5 The Civil Rights Act

6 To prevail on a claim under § 1983, a plaintiff must demonstrate: (1) the violation of a
7 federal constitutional or statutory right; and (2) that the violation was committed by a person
8 acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v.
9 Williams, 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil
10 rights claim unless the facts establish the defendant's personal involvement in the constitutional
11 deprivation or a causal connection between the defendant's wrongful conduct and the alleged
12 constitutional deprivation. See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v.
13 Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). That is, plaintiff may not sue any official on the
14 theory that the official is liable for the unconstitutional conduct of his or her subordinates.
15 Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). The requisite causal connection between a
16 supervisor's wrongful conduct and the violation of the prisoner's constitutional rights can be
17 established in a number of ways, including by demonstrating that a supervisor's own culpable
18 action or inaction in the training, supervision, or control of his subordinates was a cause of
19 plaintiff's injury. Starr v. Baca, 652 F.3d 1202, 1208 (9th Cir. 2011).

20 Plaintiff's Complaint

21 Plaintiff alleges that defendant Gray did not tell plaintiff to drop his gun or announce his
22 presence in the area.

23 Discussion

24 Plaintiff includes insufficient facts for the court to determine whether plaintiff can state a
25 cognizable civil rights claim. He includes no facts demonstrating that defendant Gray acted under
26 color of state law. Although plaintiff lists Sacramento Protection Services in the caption of his
27 complaint, he includes no charging allegations as to such defendant. Also, plaintiff fails to
28 identify what relief he seeks from this civil suit.

1 The court finds the allegations in plaintiff's complaint so vague and conclusory that it is
2 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
3 court determines that the complaint does not contain a short and plain statement as required by
4 Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint
5 must give fair notice and state the elements of the claim plainly and succinctly. Jones v. Cmty.
6 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some
7 degree of particularity overt acts which defendants engaged in that support plaintiff's claim. Id.
8 Because plaintiff failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint
9 must be dismissed. The court will, however, grant leave to file an amended complaint.

10 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
11 about which he complains resulted in a deprivation of plaintiff's constitutional rights. See, e.g.,
12 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
13 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no
14 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
15 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
16 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official
17 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,
18 268 (9th Cir. 1982).

19 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
20 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
21 complaint be complete in itself without reference to any prior pleading. This requirement exists
22 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez
23 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint
24 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation
25 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
26 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
27 and the involvement of each defendant must be sufficiently alleged.

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1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
4 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
5 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
6 Sheriff of the Sacramento County Jail filed concurrently herewith.

7 3. Plaintiff's complaint is dismissed.

8 4. Within thirty days from the date of this order, plaintiff shall complete the attached
9 Notice of Amendment and submit the following documents to the court:


10 a. The completed Notice of Amendment; and

11 b. An original of the Amended Complaint.

12 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
13 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
14 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

15 Failure to file an amended complaint in accordance with this order may result in the
16 dismissal of this action.

17 Dated: January 24, 2023

18 
19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENE PRATT, JR.,

Plaintiff,

v.

SACRAMENTO PROTECTION
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Defendants.

No. 2:22-cv-2217 KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____ Amended Complaint

Plaintiff